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November 5, 2012

via hand delivery

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Attn: CGB Room 3-B431

**Re: Kingdom Ambassadors Global Ministries Petition for Exemption from the
Commission's Closed Captioning Rules
Case No. CGB-CC-1081
CG Docket No. 06-181**

FILED/ACCEPTED

NOV -5 2012

Federal Communications Commission
Office of the Secretary

Dear Ms. Dortch:

Pursuant to the Commission's Request for Comment, Telecommunications for the Deaf and Hard of Hearing Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Association of Late-Deafened Adults (ALDA), California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this opposition to the petition of Kingdom Ambassadors Global Ministries ("KAGM") to exempt its program *R.A.W. Truth* from the Commission's closed captioning rules, 47 C.F.R. § 79.1.¹

¹ *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181 (October 5, 2012), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1601A1.pdf; *KAGM Petition for Exemption*, Case No. CGB-CC-1081, CG Docket No. 06-181 (January 5, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021032844> ("*KAGM Petition*"). The Consumer and Governmental Affairs Bureau initially determined that the *KAGM Petition* was deficient because it did not sufficiently document KAGM's inability to afford closed captioning, it did not

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Consumer Groups oppose the petition because it does not sufficiently demonstrate that KAGM has diligently sought out the lowest price of captioning services or that it cannot afford to caption its programming.

Consumer Groups acknowledge KAGM's efforts to "share the abundant life [it] ha[s] through Jesus Christ with [its] community and abroad."² KAGM's requested exemption, however, would deny equal access to its programming to community members who are deaf or hard of hearing. Maximizing accessibility through the comprehensive use of closed captions is critical to ensuring that all viewers can experience the important benefits of video programming on equal terms.

Because the stakes are so high for the millions of Americans who are deaf or hard of hearing, it is essential that the Commission grant petitions for exemptions from captioning rules only in the rare case that a petitioner conclusively demonstrates that captioning its programming would impose a truly untenable economic burden. To make such a demonstration, a petitioner must present detailed, verifiable, and specific documentation that it cannot afford to caption its programming, either with its own revenue or with alternative sources.

Under section 713(d)(3) of the Communications Act of 1934 ("1934 Act"), as added by the Telecommunications Act of 1996 Act ("1996 Act")³ and amended by section

provide sufficient information about the cost to closed caption its programming, it did not verify that it sought additional sponsorship sources, and it did not provide information on KAGM's operations and what impact having to provide closed captions would have on its program. *Letter from the Consumer and Governmental Affairs Bureau*, Case No. CGB-CC-1081, CG Docket No. 06-181 (March 7, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021902572> ("CGB Letter"). KAGM then filed a supplement. *KAGM Supplement*, Case No. CGB-CC-1081 (April 5, 2012), <http://apps.fcc.gov/ecfs/comment/view?id=6017115211>. Several pages of the supplement were not made available to the public on ECFS, including an April 5 letter from Heather Jordan describing the nature of KAGM's programming and an April 3 e-mail from the Video Caption Corporation.

² KAGM *Petition* at 2.

³ Pub. L. 104-104, 110 Stat. 56 (codified as amended at 47 U.S.C. § 613(d)(3)).

202(c) of the 21st Century Communication and Video Accessibility Act of 2010 (“CVAA”),⁴ “a provider of video programming or program owner may petition the Commission for an exemption from the [closed captioning] requirements of [the 1934 Act], and the Commission may grant such petition upon a showing that the requirements . . . would be economically burdensome.” In its July 20, 2012 Report and Order, the Commission formally adopted the analysis set forth in its October 20, 2011 Interim Standard Order and Notice of Proposed Rulemaking.⁵ In doing so, the Commission interpreted the term “economically burdensome” as being synonymous with the term “undue burden” as defined in section 713(e) of the 1934 Act and ordered the Consumer and Governmental Affairs Bureau to continue to evaluate all exemption petitions using the “undue burden” standard pursuant to the Commission’s amended rules in 47 C.F.R. § 79.1(f)(2)-(3).⁶

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.⁷ If a petitioner

⁴ Pub. L. 111-260, 124 Stat. 2751 (codified at 47 U.S.C. § 613(d)(3)).

⁵ The *Interim Standard Order* and the *NPRM* were part of a multi-part Commission decision. See *Anglers for Christ Ministries, Inc., New Beginning Ministries, Petitioners Identified in Appendix A, Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission’s Rules; Video Programming Accessibility*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, CG Docket Nos. 06-181 and 11-175, 26 FCC Rcd. 14941 (Oct. 20, 2011) (“*Anglers 2011*”).

⁶ *Report and Order, Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission’s Rules; Video Programming Accessibility*, CG Docket No. 11-175, ¶ 8 (July 20, 2012) (“*Economically Burdensome Standard Order*”). In some early adjudications, the Commission specifically analyzed exemption petitions under the four-factor rubric in section 713(e), analyzing whether each of the four factors weighed for or against granting a particular petition. E.g., *Home Shopping Club L.P.*, Case No. CSR 5459, 15 FCC Rcd. 10,790, 10,792-94 ¶¶ 6-9 (CSB 2000). Over the past decade, however, this factor-based analysis has evolved into several specific evidentiary requirements that must be satisfied to support a conclusion that a petitioner has demonstrated an undue economic burden sufficient to satisfy the requirements of section 713(e). See *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28.

⁷ See *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28.

sufficiently demonstrates an inability to afford captioning, it must also demonstrate that it has exhausted alternative avenues for obtaining assistance with captioning.⁸ Where a petition fails to make either of those showings, it fails to demonstrate that providing captions would be economically burdensome, and the Commission must dismiss the petition.⁹

I. KAGM's Ability to Afford Captioning

To sufficiently demonstrate that a petitioner cannot afford to caption its programming, a petition must provide both verification that the petitioner has diligently sought out and received accurate, reasonable information regarding the costs of captioning its programming, such as competitive rate quotes from established providers, and detailed information regarding the petitioner's financial status.¹⁰ Both showings must demonstrate that the petitioner in fact cannot afford to caption its programming and eliminate the possibility that captioning would be possible if the petitioner reallocated its resources or obtained more reasonable price quotes for captioning its programming.

A. The Cost of Captioning KAGM's Programming

To successfully demonstrate that captioning would be economically burdensome, a petitioner must demonstrate a concerted effort to determine "the most reasonable price" for captioning its programming.¹¹ To allow the Commission and the public to evaluate whether a petitioner's cost estimates are reasonable, it is essential that a petition provide, at a bare minimum, detailed information about the basis and validity

⁸ See *id.*

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *The Wild Outdoors*, Case No. CSR 5444, 16 FCC Rcd. 13,611, 13,613-14 ¶ 7 (CSB 2001), cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n.101.

of cost estimates for captioning, such as competitive hourly rate quotes and associated correspondence from several established captioning providers.¹²

KAGM claims captioning its programming “impacts meeting airdate deadlines and the added production cost makes production costly” but does not explain how captioning will impact those deadlines or what those added production costs are.¹³ KAGM merely attaches financial reports from 2009 and 2010, indicating what it previously paid to caption its programming, and a single estimate quoting a cost of \$235 per half-hour show.¹⁴ Without price quotes from multiple captioning providers and documentation of KAGM’s negotiations with captioning providers to obtain an affordable rate for its routine captioning needs, it is impossible to conclude that KAGM has made the necessary good faith effort to determine the most reasonable price for captioning its programming.

B. KAGM’s Financial Status

A successful petition requires, at a bare minimum, detailed information regarding the petitioner’s finances and assets, gross or net proceeds, and other documentation “from which its financial condition can be assessed” that demonstrates captioning would present an undue economic burden.¹⁵

KAGM notes that it is a tax-exempt non-profit entity.¹⁶ But as the Commission has plainly stated, granting petitioners “favorable exemption treatment because of their

¹² Compare, e.g., *Outland Sports, Inc.*, Case No. CSR 5443, 16 FCC Rcd. 13,605, 13,607, ¶ 7 (CSB 2001) (approving of a petitioner’s inclusion of rate quotes and associated correspondence from at least three captioning providers in its petition) with *The Wild Outdoors*, 16 FCC Rcd. at 13,613-14, ¶ 7 (disapproving of a petitioner’s bald assertion of the cost to caption a program without supporting evidence).

¹³ KAGM Petition at 1; KAGM Supplement (e-mail from Video Caption Corporation).

¹⁴ *Id.* at 5.

¹⁵ E.g., *Survivors of Assault Recovery*, Case No. CSR 6358, 20 FCC Rcd. 10,031, 10,032, ¶ 3 (MB 2005), cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

¹⁶ KAGM Petition at 1.

non-profit status [is] inconsistent with . . . Commission precedent.”¹⁷ The Commission has “specifically rejected requests by commenters to adopt a categorical exemption for all non-profit entities based solely on their non-profit status” and has “chose[n] instead to adopt revenue-based exemption standards that . . . focus on the economic strength of each [petitioner].”¹⁸ An entity’s non-profit status does not suggest, much less preclude, the possibility that it cannot afford to caption its programming.

KAGM’s petition also includes a report detailing KAGM’s broadcast expenses from January 2009 through December 2010.¹⁹ In addition to being nearly two years out of date, these figures are irrelevant because the Commission “take[s] into account the overall financial resources of the provider or program owner,” not “only the resources available for a specific program,” when evaluating an exemption petition.²⁰

KAGM also provides more than a hundred pages of monthly bank statements, but does not appear to provide any concise summary of its overall assets or annual revenue and expenses. Instead, KAGM summarily insists that its “budget cannot afford” captioning.²¹ But KAGM concedes that it funds the airtime and production of its programming out of an unspecified “operating account,” and offers no explanation as to why it cannot fund closed captioning out of that same account or why it is otherwise unable to afford captioning.

II. The Locally Produced and Distributed Non-News, Non-Repeating Exemption for Video Programming Distributors

KAGM believes that the local, non-news exemption to the closed captioning rules applies to its programming.²² But as the CGB has repeatedly recognized, the narrow

¹⁷ *Anglers 2011*, 26 FCC Rcd. at 14, 951, ¶ 18.

¹⁸ *Id.* at 14,950-51, ¶ 18 (citations omitted).

¹⁹ *KAGM Petition* at 5-6.

²⁰ *Anglers 2011*, 26 FCC Rcd. at 14,950, ¶ 17.

²¹ *KAGM Supplement* (not available in ECFS version).

²² *KAGM Petition* at 1.

exemption in Section 79.1(d)(8) of the Commission's rules applies only to "[p]rogramming that is locally produced by [a] video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the "electronic news room" technique of captioning is unavailable." Entities like KAGM are plainly not video programming distributors under the meaning of the Commission's rules and cannot qualify for this exemption.²³

III. Other Factors

Finally, KAGM offers to show scripture text and bullet points on the bottom of the screen as an alternative to closed captioning.²⁴ While Consumer Groups acknowledge KAGM's efforts to make its programming accessible, providing limited textual supplements is not an adequate substitute for closed captioning.

IV. Conclusion

KAGM has not sufficiently demonstrated that it diligently sought out the lowest price of captioning services or that it cannot afford to caption its programming. Accordingly, we respectfully urge the Commission to dismiss the petition and require *R.A.W. Truth* to come into compliance with the closed captioning rules.

²³ See 47 C.F.R. § 79.1(a)(2) (defining "video programming distributor").

²⁴ *KAGM Petition* at 2.

Respectfully submitted,



Blake E. Reid[†]

November 5, 2012

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[†] Counsel thanks Georgetown Law student Jessica Lee for her assistance in preparing these comments.

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CERTIFICATION

Pursuant to 47 C.F.R. §§ 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied on in the foregoing document, these facts and considerations are true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Claude L. Stout". The signature is written in a cursive, flowing style.

Claude Stout
November 5, 2012

CERTIFICATE OF SERVICE

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on November 5, 2012, pursuant to the Commission's aforementioned Request for Comment, a copy of the foregoing document was served by first class U.S. mail, postage prepaid, upon the petitioner:

Kingdom Ambassadors Global Ministries
188 Vincent Avenue
Lynbrook, NY 11563

A handwritten signature in black ink, appearing to read "Niko Perazich", written over a horizontal line.

Niko Perazich

November 5, 2012